

FILED  
OCT 13 2006

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES OF AMERICA,	)	CR-00-0505-MJJ
	)	
Plaintiff,	)	<b>[PROPOSED] PROTECTIVE ORDER</b>
	)	<b>REGARDING PRODUCTION OF</b>
v.	)	<b>REDACTED NOTES OF INTERVIEW</b>
	)	<b>OF CHARLES W. McCALL</b>
CHARLES W. MCCALL and JAY M.	)	
LAPINE	)	
	)	
Defendants.	)	

A. By order dated January 10, 2003, the Court permitted McKesson to intervene in this case.

B. On April 28, 1999, McKesson publicly disclosed that its auditors had discovered that certain contingent software sales at its HBO & Company ("HBOC") subsidiary had been improperly recorded as revenue and had been reversed.

C. Thereafter, the Audit Committee of the Board of Directors of McKesson engaged the law firm of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") to conduct an investigation into the facts and circumstances relating to the accounting practices at issue ("Review").

D. In the course of the Review, Skadden conducted interviews of current and former employees of McKesson and HBOC and prepared memoranda for each of the interviews ("Interview Memoranda"). The memoranda are identified on their face as "PRIVILEGED AND CONFIDENTIAL; SUBJECT TO THE ATTORNEY WORK PRODUCT AND ATTORNEY-CLIENT PRIVILEGES."

E. Based upon the information obtained and the conclusions reached in the Review, Skadden prepared a report ("Audit Committee Report"), which included three volumes of

1 exhibits. The Audit Committee Report and its exhibits are identified on their face as  
2 "PRIVILEGED AND CONFIDENTIAL; SUBJECT TO THE ATTORNEY WORK PRODUCT  
3 AND ATTORNEY-CLIENT PRIVILEGES."

4 F. McKesson produced the Audit Committee Report, including the three volumes of  
5 exhibits, and the Interview Memoranda to the United States Attorney's Office for the Northern  
6 District of California ("USAO") pursuant to a Confidentiality Agreement dated May 28, 1999  
7 ("Confidentiality Agreement").

8 G. On October 5, 2006, defendant Charles McCall served McKesson with a  
9 subpoena seeking production of documents related to the Interview Memorandum Skadden  
10 prepared in connection with its May 28, 1999, interview of Mr. McCall, including the notes taken  
11 during the interview by any Skadden attorney.

12 H. On October 10, 2006, counsel for McKesson and Mr. McCall met and conferred  
13 and agreed to limit the scope of the subpoena to include only certain agreed-upon portions of the  
14 handwritten notes taken by a Skadden attorney during the course of Mr. McCall's interview (the  
15 "Redacted Notes"). Mr. McCall agrees that McKesson is not required to produce any additional  
16 documents pursuant to the October 5, 2006, subpoena.

17 I. Neither Mr. McCall, Mr. Lapine nor the USAO will contend that by producing the  
18 Redacted Notes, McKesson is waiving any attorney-client or work product privilege protections  
19 with respect to any topics addressed in the notes taken by a Skadden attorney during the course of  
20 Mr. McCall's interview, other than those topics addressed in the Redacted Notes, or with respect  
21 to any Interview Memoranda.

22 J. Accordingly, Skadden is directed to produce the Redacted Notes to Mr. McCall,  
23 Mr. Lapine and to the USAO pursuant to the terms of this protective order.

24 IT IS THEREFORE ORDERED:

25 1. McKesson shall produce the Redacted Notes to Mr. McCall, Mr. Lapine and the  
26 USAO within one business day of the date of notice of entry of this Order.

27 2. The Redacted Notes shall be used by Mr. McCall, Mr. Lapine and the USAO  
28 solely for the purpose of this case and shall not be provided to parties, counsel, consultants or

1 expert witnesses employed by Mr. McCall, Mr. Lapine or the USAO in any other litigation or  
2 administrative proceeding, except as otherwise may be required or permitted by an order issued  
3 in such other litigation or administrative proceeding.

4 3. Except with the prior written consent of McKesson, or upon prior order of this  
5 Court obtained upon notice to the same, Mr. McCall, Mr. Lapine and the USAO may not disclose  
6 the Redacted Notes to any person other than:

7 (A) any person who was present at the interview of Mr. McCall who is  
8 expected to testify in the trial of this proceeding;

9 (B) Mr. McCall's and Mr. Lapine's counsel, any clerical, paralegal and other  
10 staff employed by such counsel, and any outside vendor assisting in the conduct of the case;

11 (C) consultants and expert witnesses retained for the defense in this case,  
12 provided that each such person shall execute a copy of the Certification annexed to this Order  
13 (which shall be retained by counsel to Mr. McCall or Mr. Lapine, as appropriate, and made  
14 available for inspection by the Court, the USAO or McKesson upon good cause shown and upon  
15 an order of the Court) before being shown or given the Redacted Notes; and

16 (D) the Court, court personnel, potential jurors, jurors or alternate jurors.

17 4. Any person receiving the Redacted Notes pursuant to this Order shall not reveal or  
18 discuss the Redacted Notes to or with any person who is not entitled to receive such information,  
19 except as set forth herein.

20 5. In the event any person receiving the Redacted Notes pursuant to this Order  
21 wishes to use any part of the Redacted Notes, or any papers containing or making reference to the  
22 Redacted Notes, in any pleading, application, motion or document filed with the Court in this  
23 case, such pleading, application, motion or document shall be filed under seal, until such time as  
24 the Court orders otherwise, or denies permission to file under seal, and such pleading,  
25 application, motion or document shall be filed with the Court in sealed envelopes or other  
26 appropriate sealed containers. On the outside of the envelopes, the contents shall be identified.  
27 The word "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in  
28 the following form shall also be printed on the envelope:

1 This envelope is sealed pursuant to Order of the Court, contains confidential  
 2 information and is not to be opened or the contents revealed, except by Order of  
 the Court or agreement by the parties.

3  
 4 6. All provisions of this Order shall continue to be binding after the conclusion of  
 5 this case, <sup>including any appeal</sup> unless otherwise ordered. Within thirty (30) days after the conclusion of this case,  
 6 either in the District Court or in the appellate courts, Mr. McCall, Mr. Lapine and the USAO  
 7 shall return the Redacted Notes and all papers containing or making reference to the contents of  
 8 the Redacted Notes to McKesson.

9 7. The production or use of the Redacted Notes pursuant to this Order does not  
 10 constitute a waiver of any applicable privilege or work product protection. Nothing herein is  
 11 intended to prejudice McKesson's position in any other case, including but not limited to the  
 12 proceedings captioned In re McKesson HBOC, Inc. Securities Litigation, Case No. C99-20743  
 13 RMW (N.D. Cal.); Arthur Andersen LLP v. McKesson and HBOC, Case No. C-06-02035 RMW  
 14 (N.D. Cal.); McKesson Corp. et al. v. Arthur Andersen LLP et al., Case No. C-05-04020 RMW  
 15 (N.D. Cal.); Green v. McKesson, Inc., Case No. 2002 CV 48407 (Ga. Super. Ct.); and Hall  
 16 Family Investments, L.P. v. McKesson, Inc., Case No. 2002 CV 48612 (Ga. Super. Ct.), that the  
 17 Redacted Notes remains protected by the attorney-client privilege and the attorney work product  
 18 doctrine.

19 8. If any person receiving material covered by this Order is subpoenaed in another  
 20 action or proceeding or served with a document demand, and such subpoena or document  
 21 demand seeks any of the Redacted Notes or any papers containing or making reference to the  
 22 contents of any of the Redacted Notes, the person receiving the subpoena or document demand  
 23 shall give prompt written notice to the USAO and to McKesson, and shall, to the extent  
 24 permitted by law, withhold production of the subpoenaed material until any dispute relating to  
 25 the production of such material is resolved.

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1 SO ORDERED.

2 Dated: October 13 2006

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5 THE HONORABLE MARTIN J. JENKINS  
6 Unites States District Judge  
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CERTIFICATION

I hereby certify my understanding that pursuant to the terms and restrictions of the Protective Order dated October \_\_\_\_, 2006 in United States v. McCall and Lapine, Case No. CR-00-0505-MJJ (N.D. Cal.) ("Protective Order"), a copy or the substance of the contents of the Redacted Notes as defined in the Protective Order ("Confidential Material") are being made available to me. I have been given a copy of the Protective Order and read it. I agree to be bound by the Protective Order.

1. I shall use information I learn as a result of having access to Confidential Material solely for the purposes of this case and for no other purpose.

2. I shall not disclose Confidential Material to anyone, except as authorized by the Protective Order.

3. I shall maintain Confidential Material, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it.

4. No later than thirty (30) days after the conclusion of this processing, I will return any Confidential Material, including copies, notes or other transcriptions made therefrom, to the USAO.

5. I hereby consent to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing these representations and the Protective Order.

DATED: \_\_\_\_\_

SIGNED: \_\_\_\_\_